

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUB-TITLE 7. WATER RESOURCES

CHAPTER 171

DESIGNATION AND REGULATION OF WATER MANAGEMENT AREAS

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Subchapter 1

General Provisions

§13-171-1 Purpose. The purpose of this chapter is to provide for the designation and regulation of hydrologic areas where water resources are being threatened by existing or proposed withdrawals or diversions of water, water quality problems, or serious disputes. It shall be the duty of the commission to designate areas for the purpose of establishing administrative control over the withdrawals and diversions of ground and surface water in threatened areas to ensure the most beneficial use, development, or management of the water resources in the interest of the people of the state. [Eff. MAY 27, 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-41)

§13-171-2 Definitions. As used in this chapter, unless the context otherwise requires:

"Authorized planned use" means the use or projected use of water by a development that has received the proper state

land use designation and county development plan/community plan approvals.

"Board" means the board of land and natural resources.

"Chairperson" means the chairperson of the commission on water resource management.

"Change in use" means any modification or change in water use from or to domestic, municipal, military, agriculture (including agricultural processing), or industrial use.

"Commission" means the commission on water resource management.

"Contested case" means a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for an agency hearing.

"Continuous flowing water" means a sufficient flow of water that could provide for migration and movement of aquatic life and includes those reaches of streams which, in their natural state, normally go dry seasonally at the location of the proposed alteration.

"Department" means the department of land and natural resources.

"Deputy" means the deputy to the chairperson of the commission on water resource management.

"Domestic use" means any use of water for individual personal needs and for household purposes such as drinking, bathing, heating, cooking, noncommercial gardening, and sanitation.

"Emergency" means the absence of a sufficient quantity and quality of water in any area whether designated or not which threatens the public health, safety, and welfare as determined by the commission.

"Ground water" means any water found beneath the surface of the earth, whether or not in perched, dike-confined, or basal supply; in underground channels or streams; in standing, percolating, or flowing condition; or under artesian pressure.

"Hydrologic unit" means a surface drainage area or a ground water basin or a combination of the two.

"Impoundment" means any lake, reservoir, pond, or other containment of surface water occupying a bed or depression in the earth's surface and having a discernible shoreline.

"Instream use" means beneficial uses of stream water for significant purposes which are located in the stream and which are achieved by leaving the water in the stream. Instream uses include, but are not limited to:

- (1) Maintenance of aquatic life and wildlife habitats;
- (2) Outdoor recreational activities;
- (3) Maintenance of ecosystems such as estuaries, wetlands, and stream vegetation;

- (4) Aesthetic values such as waterfalls and scenic waterways;
- (5) Navigation;
- (6) Instream hydropower generation;
- (7) Maintenance of water quality;
- (8) The conveyance of irrigation and domestic water supplies to downstream points of diversion; and
- (9) The protection of traditional and customary Hawaiian rights.

"Person" means any individual, firm, association, organization, partnership, estate, trust, corporation, company, or any governmental unit.

"Reasonable-beneficial use" means the use of water in such a quantity as is necessary for economic and efficient utilization, for a purpose, and in a manner which is not wasteful and is both reasonable and consistent with the state and county land use plans and the public interest.

"Stream diversion" means the act of removing water from a stream into a channel, pipeline, or other conduit.

"Surface water" means both contained surface water (that is, water upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other watercourse, lakes, and reservoirs) and diffused surface water (that is, water occurring upon the surface of the ground other than in contained waterbodies). Water from natural springs is surface water when it exits from the spring onto the earth's surface.

"Sustainable yield" means the maximum rate at which water may be withdrawn from a water source without impairing the utility or quality of the water source as determined by the commission.

"Water" or "waters of the state" means any and all water on or beneath surface of the ground, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground.

"Water management area" means a geographic area which has been designated pursuant to chapter 13-171 as requiring management of the ground or surface water resource, or both.

"Water source" means a place within or from which water is or may be developed, including but not limited to: (1) generally, an area such as a watershed defined by topographic boundaries, or a definitive ground water body; and (2) specifically, a particular stream, other surface water body, spring, tunnel, or well or related combination thereof.

"Well" means any excavation or opening into the ground, or an artificial enlargement of a natural opening drilled, tunneled, dug, or otherwise constructed for the location,

exploration, development, injection, or recharge of ground water and by which ground water is drawn or is capable of being withdrawn or made to flow. [Eff. MAY 27, 1988] (Auth: HRS §§91-2, 174C-8) (Imp: HRS §§91-2, 174C-3)

Subchapter 2

Designation of Water Management Areas

§13-171-3 Initiation by chairperson. The designation of a water management area by the commission may be initiated upon recommendation by the chairperson. In addition to this prerogative, it shall be the duty of the chairperson to make the recommendations from time to time when it is desirable or necessary to designate a water management area for the purposes stated in this chapter and there is data for a decision by the commission. [Eff. MAY 27, 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-41)

§13-171-4 Initiation by petition. (a) The designation of a water management area by the commission may also be initiated by any interested person by written petition to the chairperson proposing the designation of a specified area and presenting the reasons for such designation. The petition for designation of a water management area shall be made on forms provided by the commission. It shall be the duty of the chairperson, after consultation with the appropriate county mayor and county water board, to act upon the petition by making a recommendation for or against the proposed designation to the commission within sixty days after receipt of the petition or additional time as may be reasonably necessary to determine whether there is factual data to warrant the proposed designation.

(b) Designated ground water areas established under chapter 177, HRS, the Ground Water Use Act, and remaining in effect at the effective date of this chapter shall continue as water management areas. [Eff. MAY 27, 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-41)

§13-171-5 Notice; public hearing required. (a) When a recommendation for designation of a water management area has been accepted, the commission shall hold a public hearing at a

location in the vicinity of the area proposed for designation and publish a notice of the hearing setting forth:

- (1) A description of the land area proposed to be designated in terms of appropriate legal subdivisions and tax map keys;
- (2) The purpose of the public hearing; and
- (3) The time, date, and place of the public hearing where written or oral testimony may be submitted and heard.

(b) The notice shall be published once each week for three successive weeks in a newspaper of statewide circulation and the last publication shall be not less than ten days nor more than thirty days before the date set for the hearing. Publication of the notice of public hearing shall be considered as sufficient notice to all landowners and water users who might be affected by the proposed designation.

[Eff. MAY 27, 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-42)

§13-171-6 Investigations required. (a) Before any proposed water management area is designated by the commission, the chairperson may conduct, cooperate with the appropriate federal or county water agencies to conduct or administer contracts to conduct, any scientific investigation or study deemed necessary for the commission to make a decision whether to designate a water management area.

(b) The chairperson from time to time may also require reports from water users detailing the amount of water being withdrawn and the manner and extent of the beneficial use. The reports shall be made on forms furnished by the commission. [Eff. MAY 27, 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-43)

§13-171-7 Ground water criteria for designation. In designating an area for ground water use regulation, the commission shall consider the following:

- (1) Whether an increase in water use or authorized planned use may cause the maximum rate of withdrawal from the ground water source to reach ninety percent of the sustainable yield of the proposed water management area;
- (2) That the rates, times, spatial patterns, or depths of existing withdrawals of ground water are endangering the stability or optimum development of the ground water body due to upconing or encroachment of salt water;

- (3) That the chloride contents of existing wells are increasing to levels which materially reduce the value of their existing uses;
- (4) Whether excessive preventable waste of water is occurring;
- (5) There is an actual or threatened water quality degradation as determined by the department of health;
- (6) Serious disputes respecting the use of ground water resources are occurring;
- (7) Whether regulation is necessary to preserve the diminishing ground water supply for future needs, as evidenced by excessively declining ground water levels; or
- (8) Whether water development projects that have received any federal, state, or county approval may result, in the opinion of the commission, in one of the above conditions.

Notwithstanding an imminent designation of a water management area conditioned on a rise in the rate of ground water withdrawal to a level of ninety percent of the area's sustainable yield, the commission, when such level reaches the eighty percent level of the sustainable yield, may invite the participation of water users in the affected area to an informational hearing for the purposes of assessing the ground water situation and devising mitigative measures. [Eff. MAY 27, 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-44)

§13-171-8 Surface water criteria for designation. In designating an area for surface water use regulation, the commission shall consider the following:

- (1) Whether regulation is necessary to preserve the diminishing surface water supply for future needs, as evidenced by excessively declining surface water levels, not related to rainfall variations, or increasing or proposed diversions of surface waters to levels which may detrimentally affect existing instream uses or prior existing off stream uses;
- (2) Whether additions to or the diversions of stream waters are reducing the capacity of the stream to assimilate pollutants to an extent which adversely affects public health or existing instream uses; or
- (3) Whether serious disputes respecting the use of surface water resources are occurring.

[Eff. MAY 27, 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-45)

§13-171-9 Findings of fact; decision of commission.

After public hearing and any investigations deemed necessary have been completed, the chairperson, after consultation with the appropriate county council and county water board, shall make a recommendation to the commission for decision. If the commission decides to designate a water management area, it shall cause a notice of its decision to be published in a newspaper of general circulation in the appropriate county and when so published its decision shall be final unless judicially appealed in the appropriate court. [Eff. MAY 27, 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-12, 174C- 46)

§13-171-10 Modifying and rescinding designated areas.

The modification of the boundaries or the rescinding of existing water management areas by the commission may be initiated by the chairperson or by a petition to the commission by any person with proper standing. The procedure for modifying the boundaries of an existing water management area or for rescinding an existing water management area shall be as provided in subchapter 2 for the designation of a water management area. [Eff. MAY 27, 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-47)

Subchapter 3

Water Use Permits

§13-171-11 Permits required. (a) No person shall make any withdrawal, diversion, impoundment, or consumptive use of water in any designated water management area without first obtaining a permit from the commission. However, no permit shall be required for domestic consumption of water by individual users, and no permit shall be required for the use of a catchment system to gather water.

(b) In its regulation of water resources in designated water management areas, the commission shall delegate to the county boards of water supply the authority to allocate the use of water for municipal purposes, subject to the limits of water supply allocated to the county boards of water supply in their role as water purveyors. [Eff. MAY 27, 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-48)

§13-171-12 Application for new and existing water use permits. (a) A person shall file an application with the commission to use water within a designated water management area. No withdrawal, diversion, impoundment, or consumptive use of water shall be made by the applicant until receipt of a permit issued by the commission, provided that, an existing use in a newly designated water management area may be continued until such time as the commission has acted upon the existing water use permit application.

(b) Each permit application shall be made on forms furnished by the commission and shall contain the following:

- (1) The name and address of the applicant and landowner; provided that:
 - (A) In the event the applicant is an association, organization, partnership, trust, corporation, or any other legal entity doing business in Hawaii, the address of its principal place of business shall be stated in the application; and
 - (B) In the event a lessee, licensee, developer, or any other person with a terminable interest or estate in the land, which is the water source of the permitted water, applies for a water permit, the landowner shall also be stated as a joint applicant for the water permit;
- (2) The date of application;
- (3) The water source of the water supply;
- (4) The quantity and quality of water requested;
- (5) The use of the water and any limitations thereon;
- (6) The location of the use of water;
- (7) The location of the well or point of diversion; and
- (8) Such other relevant information that the commission may request from time to time.

(c) Each application for a permit to use water shall be accompanied by a non-refundable filing fee of \$25.00 provided that governmental agencies shall not be subject to the payment of any fees.

(d) The commission in its discretion may allow a person to apply for several related withdrawals in the same application for a water use permit. [Eff. MAY 27, 1988]
(Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-50, 174C-51)

§13-171-13 Conditions for a water use permit. (a) To obtain a permit pursuant to this part, the applicant shall establish that the proposed use of water:

- (1) Can be accommodated with the available water source;
 - (2) Is a reasonable-beneficial use as defined in section 13-171-2;
 - (3) Will not interfere with any existing legal use of water;
 - (4) Is consistent with the public interest;
 - (5) Is consistent with state and county general plans and land use designations; and
 - (6) Is consistent with county land use plans and policies.
- (b) Within sixty days after receipt of a notice of a permit application, the county shall inform the commission if the proposed use is inconsistent with the county land use plans and policies.
- (c) The common law of the state to the contrary notwithstanding, the commission shall allow the holder of a use permit to transport and use surface or ground water beyond overlying land or outside the watershed from which it is taken if the commission determines that such transport and use are consistent with the public interest and the general plans and land use policies of the state and counties.
- (d) The commission, by rule, may reserve water in such locations and quantities and for such seasons of the year as in its judgment may be necessary. Such reservations shall be subject to periodic review and revision in the light of changed conditions; provided that all presently existing legal uses of water shall be protected. [Eff. MAY 27, 1988]
(Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-49)

§13-171-14 Existing uses. (a) All existing uses of water in a designated water management area, except those exempted from regulation by this chapter, may be continued after July 1, 1987, only with a permit issued in accordance with sections 13-171-12, 13-171-13, 13-171-15, and 13-171-17 through 13-171-21.

(b) Whether the existing use is a reasonable-beneficial use and is allowable under the common law of the State shall be determined by the commission after a hearing; provided that even if the commission finds that the existing use is not allowable under the common law of the state, such finding of itself shall not constitute a bar to the granting of the permit. The commission may make such a determination without a hearing, if the quantity of water applied for does not exceed 25,000 gallons per month or if the quantity of water applied for exceeds said amount per month, but no objection to the application is filed by any person having standing to file an

objection. In determining whether an application does not exceed the amount per month set forth in this section, the commission shall consider an average of water use over the three-month period immediately preceding the filing of the application.

(c) Two or more existing uses of water are deemed to be competing when they draw water from the same hydrologically controllable area and the aggregate quantity of water consumed by the users exceeds the appropriate sustainable yield or instream flow standards established pursuant to law for the area. If applications are made to continue existing uses which are competing and the uses otherwise meet the requirements of subchapter 3, the commission shall hold a hearing to determine the quantity of water that may be consumed and the conditions to be imposed on each existing use. [Eff. MAY 27, 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-50, 174C-71)

§13-171-15 Late filing for existing uses. An application for a permit to continue an existing use must be made within a period of one year from the date of designation. Except for appurtenant rights, failure to apply within this period creates a presumption of abandonment of the use, and the user, if the user desires to revive the use, must apply for a permit under section 13-171-12. If the commission determines that there is just cause for the failure to file, it may allow a late filing. However, the commission may not allow a late filing more than five years after the effective date of these rules. The commission shall send two notices, one of which shall be by registered mail, to existing users to file for an application for a permit to continue an existing use. [Eff. MAY 27, 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-50, 174C-51)

§13-171-16 Competing new water use permit applications. If two or more applications which otherwise comply with section 13-171-13 are pending for a quantity of water that is inadequate for both or all, or which for any other reason are in conflict, the commission shall first, seek to allocate water in such a manner as to accommodate both applications if possible; second, if mutual sharing is not possible, then the commission shall approve that application which best serves the public interest. [Eff. MAY 27, 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-54)

§13-171-17 Public notice. (a) Upon receipt of the application, the commission shall cause a notice thereof to be published in a newspaper having general circulation within the affected area. The notice shall be published at least once a week for two consecutive weeks. In addition, the commission shall cause a copy of such notice to be sent to any person who has filed a written request for notification of any pending applications affecting a particular designated area and to the mayor and the water board of the affected county. This notification shall be sent by regular mail before the date of last publication. The commission shall also make available to the public, upon request, a monthly bulletin of all pending applications.

(b) The notice and the monthly bulletin shall contain the name and address of the applicant; the date of filing; the date set for a hearing, if any; the source of the water supply; the quantity of water applied for; the use to be made of the water and any limitations thereon; the place of the use; and the location of the well point or diversion.

(c) The notice shall state that written objections to the proposed permit may be filed with the commission by a specified date. The time limits within which objections must be filed are set forth in section 13-171-18. The commission, at its discretion, may request further information from either applicant or objectors, and a reasonable time shall be allowed for such responses. Each applicant shall be notified by the commission of the objections filed to an application. [Eff. MAY 27, 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-52)

§13-171-18 Objection to proposed water use permit. (a) Within ten working days after the last public notice of the pending permit application, a party may file with the commission, written objections to the proposed permit and a brief in support of such objections. Such party shall serve copies of the objections and brief upon the applicant.

(b) The written objection shall:

- (1) Set forth questions of procedure, fact, law or policy, to which objections are taken; and
- (2) State all grounds for objections to the proposed permit. The grounds not cited or specifically urged are waived.

(c) Within ten working days after the filing of an objection with the commission, any other party may file with the commission a brief in support of the proposed permit. Such party shall serve copies of the brief in support upon the objecting party.

- (d) The support brief shall:
 - (1) Answer specifically the points of procedure, fact, law or policy to which objections were taken; and
 - (2) State the facts and reasons why the permit should be approved.

[Eff. MAY 27, 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-52)

§13-171-19 Evaluation period. (a) In the event no statement of objections is filed, the commission may proceed to approve or reject the permit application.

(b) Upon the filing of any objections and briefs together with the briefs in support, the commission may render its decision or request further information from either the applicant or the objector before rendering its decision.

(c) An application shall be acted upon by the commission within ninety calendar days of an application not requiring a hearing, or within one hundred eighty calendar days of an application requiring a hearing. The time periods prescribed in this subsection shall not be deemed to run for any period in which an application is not complete in all material respects in the judgment of the commission.

(d) A permit user of water in an existing water management area, with a continuous reduced water usage, shall be given priority to reobtain its permitted level of water usage over any other application; provided that the use remains the same and is reasonable and beneficial and water is available.

(e) In acting upon any application, the commission need consider only those objections filed by a person who has some property interest in any land within the hydrologic unit from which the water sought by the applicant is to be drawn or who will be directly and immediately affected by the water use proposed in the application. The commission shall adopt rules governing the filing of objections and the persons having standing to file objections. [Eff. MAY 27, 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-50, 174C-52, 174C-53)

§13-171-20 Water use permit issuance. (a) After a notice of permit application for an existing use has been published as provided in section 13-171-17, the commission shall issue an interim permit for the continuation of an existing use in effect on July 1, 1987, if the criteria set forth in section 13-171-14 are met and the existing use is reasonable and beneficial.

(b) The commission shall also issue an interim permit for an estimated, initial allocation of water if the quantity of water consumed under the existing use is not immediately verifiable, but the existing use otherwise meets the conditions of this chapter for an interim permit or permanent permit. An interim permit is valid for such time period specified therein. The commission may issue successive interim permits of limited duration. Interim permits are subject to revocation under section 13-171-24. Whenever interim permits are to be issued, the time periods specified in section 13-171-19 apply to the issuance or nonissuance of interim permits.

(c) A permanent permit to continue an existing use shall be issued by the commission for a quantity of water not exceeding that quantity being consumed under the existing use interim permit. The quantity being consumed shall be determined and verified by the best available means not unduly burdensome on the applicant, as determined by the commission.

(d) The commission may prescribe the installation of metering or gauging devices, and, if so prescribed, such metering or gauging devices shall be in place and operational for at least one year before a determination is made as to the quantity of water being consumed in an existing use and whether a permanent permit is issued.

(e) The commission shall condition permits under this chapter in such a manner as to protect instream flows and maintain sustainable yields of ground water established under the Hawaii Water Plan. [Eff. MAY 27, 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-50, 174C-53, 174C-71)

§13-171-21 Duration of water use permit. (a) An interim permit is valid for such time period as prescribed by the commission and as specified on the permit therein. If an interim permit is issued pending verification of the actual quantity of water being consumed under the existing use, a final determination of that quantity shall be made within five years of the filing of the application to continue the existing use. In the final determination, the commission may increase or reduce the amount initially granted the permittee.

(b) Each permanent permit for water use in a designated water management area shall be valid until the designation of the water management area is rescinded, unless revoked as provided in section 13-171-24, or modified as provided in section 13-171-23. [Eff. MAY 27, 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-50, 174C-55)

§13-171-22 Review of water use permit. (a) The commission shall retain and continue to have jurisdiction for the purpose of reviewing and modifying every permit as may be necessary in fulfillment of its duties and obligations under this code.

(b) At least once every twenty years, the commission shall conduct a comprehensive study of all permits issued under this chapter to determine whether the conditions on such permits are being complied with. The commission shall prepare a formal report to the legislature which shall be available to the public. [Eff. MAY 27, 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-56)

§13-171-23 Modification of water use permit. (a) A permittee may seek modification of any term of a permit. A permittee who seeks to change the use of water subject to the permit, whether or not such change in use is of a material nature, or to change the place of use of the water or to use a greater quantity of water than allowed under the permit or to make any change in respect to the water which may have a material effect upon any person or upon the water resources, shall make application for such modification pursuant to section 13-171-12. Modification of one aspect or condition of a permit may be conditioned on the permittee's acceptance of changes in other aspects of the permit.

(b) All permit modification applications shall be treated as initial permit applications and be subject to sections 13-171-12 to 13-171-22; except that if the proposed modification involves an increase in the quantity of water not exceeding an average amount per month as set forth in section 13-171-14, the commission, at its discretion, may approve the proposed modification without a hearing provided that the permittee establishes that:

- (1) A change in conditions has resulted in the water allowed under the permit becoming inadequate for the permittee's needs; or
- (2) The proposed modification would result in a more efficient utilization of water than is possible under the existing permit.

(c) County agencies are exempt from the requirements of this section except where the modification involves a change in the quantity of water to be used or where the new use would adversely affect the quality of the water or quantity of use of another permittee. [Eff. MAY 27, 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-57)

§13-171-24 Revocation of water use permit. After a hearing, the commission may suspend or revoke a permit for:

- (1) Any materially false statement in the application for the water use permit, a modification of a permit term, or any materially false statement in any report or statement of fact required of the user pursuant to this part.
- (2) Any willful violation of any condition of the permit.
- (3) Any violation of any provision of this chapter.
- (4) Partial or total nonuse, for reasons other than conservation, of the water allowed by the permit for a period of four continuous years or more. The commission may permanently revoke the permit as to the amount of water not in use unless the user can prove that the user's nonuse was due to extreme hardship caused by factors beyond the user's control. The commission and the permittee may enter into a written agreement that, for reasons satisfactory to the commission, any period of nonuse may not apply towards the four-year revocation period. Any period of nonuse which is caused by a declaration of water shortage pursuant to section 13-171-44 shall not apply towards the four-year period of forfeiture. The commission may cancel a permit, permanently and in whole, with the written consent of the permittee.

[Eff. MAY 27, 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-58)

§13-171-25 Transfer of water use permit. A permit may be transferred in whole or in part from the permittee to another if:

- (1) The conditions of use of the permit including, but not limited to place, quantity, and purpose of the use remain the same; and
- (2) The commission is informed of the transfer within ninety days.

Failure to inform the of the transfer invalidates the transfer and constitutes a ground for revocation of the permit. A transfer which involves a change in any condition of the permit, including a change in use covered in section 13-171-22, is also invalid; and constitutes a ground for revocation. [Eff. MAY 27, 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-59)

§13-171-26 Contested cases. Chapter 91, HRS shall apply except where it conflicts with this chapter. In such a case, this chapter shall apply. Any other law to the contrary notwithstanding, including chapter 91, HRS, any contested case hearing under this section shall be appealed upon the record directly to the supreme court for final decision. [Eff. MAY 27, 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-12, 174C-60)

§13-171-27 Appurtenant rights. Appurtenant rights are preserved. Nothing in this part shall be construed to deny the exercise of an appurtenant right by the holder thereof at any time. A permit for water use based on an existing appurtenant right shall be issued upon application. Such permit shall be subject to sections 13-168-5, 13-168-6, 13-171-12, 13-171-24, 13-171-25, 13-171-26, and subchapters 4 and 5 of this chapter. [Eff. MAY 27, 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-63)

Subchapter 4

Declaration of Water Shortage

§13-171-40 Principles of water shortage declaration.
(a) The commission shall formulate a plan for implementation during periods of water shortage. As a part of the plan, the commission shall adopt a reasonable system of permit classification according to source of water supply, method of extraction or diversion, use of water, or a combination thereof.

(b) The commission may declare that a water shortage exists within all or part of an area when insufficient water is available to meet the requirements of the permit system or when conditions are such as to require a temporary reduction in total water use within the area to protect water resources from serious harm. [Eff. MAY 27, 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-62)

§13-171-41 Criteria for water shortage declaration. A water shortage declaration shall be made by the commission within all or part of a water management area which the commission has found and publicly declared that it is necessary to regulate the uses of water because in its opinion

that usage has caused or may cause within the foreseeable future:

- (1) Withdrawals that exceed the recharge;
- (2) Declining water levels or heads;
- (3) Deterioration in the quality of water due to increasing chloride content;
- (4) Excessive waste of water which can be prevented; or
- (5) A situation in which any further water development would endanger the ground water aquifer or the existing sources of supply.

[Eff. MAY 27, 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-62)

§13-171-42 Permit classification. (a) The commission shall formulate a plan for implementation during periods of water shortage. As a part of the plan, the commission shall adopt a reasonable system of permit classification according to source of water supply, method of extraction or diversion, use of water, or a combination thereof.

(b) In accordance with this chapter, the commission may impose such restrictions on one or more classes of permits as may be necessary to protect the water resources of the area from serious harm and to restore them to their previous condition.

(c) All permittees, unless exempted by the commission, shall submit a water shortage plan outlining how it will reduce its own water use in case of a shortage. Every water shortage plan shall be subject to approval or modification by the commission. [Eff. MAY 27, 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-62)

§13-171-43 Notice. (a) When a water shortage is declared, the commission shall cause a notice thereof to be published in a prominent place in a newspaper of general circulation throughout the area. The notice shall be published each day for the first week of the shortage and once a week thereafter until the declaration is rescinded. Publication of such notice shall serve as notice to all water users in the area of the condition of water shortage.

(b) The commission shall cause each permittee in the area to be notified by regular mail of any change in the conditions of the permittee's permit, any suspension thereof, or of any other restriction on the use of water for the duration of the water shortage. [Eff. MAY 17, 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-62)

§13-171-44 Duration of water shortage declaration. A declaration of water shortage and any measure adopted pursuant thereto may be rescinded by the commission when conditions no longer require a temporary reduction in total water use within a designated water management area. [Eff. MAY 27, 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-62)

Subchapter 5

Declaration of Water Emergency

§13-171-50 Decision by commission. If an emergency condition arises due to a water shortage within any area, whether within or outside of a water management area, and if the commission finds that the restrictions imposed under section 13-171-42 are not sufficient to protect the public health, safety, or welfare, or the health of animals, fish, or aquatic life, or a public water supply, or recreational, municipal, agricultural, or other reasonable uses, the commission may issue orders reciting the existence of such an emergency and requiring that such actions as the commission deems necessary to meet the emergency be taken, including but not limited to apportioning, rotating, limiting, or prohibiting the use of the water resources of the area. [Eff. MAY 27, 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-62)

§13-171-51 Notice. (a) When a water emergency is declared, the commission shall publish notice thereof in a newspaper of general circulation throughout the area. The notice shall be published each day for the first week of the emergency and once a week thereafter until the emergency is rescinded.

(b) The commission shall cause each registered user of water and permittee in the area to be notified by regular mail of any change to a registered water use or condition of a permittee's permit. The notice shall describe such actions as the commission deems necessary to meet the emergency, including but not limited to apportioning, rotating, limiting, or prohibiting the use of the water resource in the area. [Eff. MAY 27, 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-62)

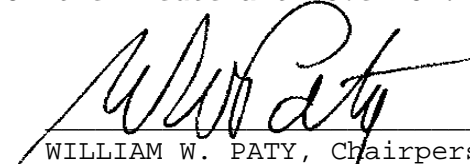
§13-171-52 Disposition of challenge to declaration. Any party to whom an emergency order is directed may challenge such an order but shall immediately comply with the order, pending disposition of the party's challenge. The commission shall give precedence to a hearing on such challenge over all other pending matters. [Eff. MAY 27, 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-62)

§13-171-53 Duration of water emergency. A declaration of water emergency and any measure ordered pursuant thereto may be rescinded by the commission when conditions no longer require a temporary reduction in total water use within the emergency area. [Eff. MAY 27, 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-62)

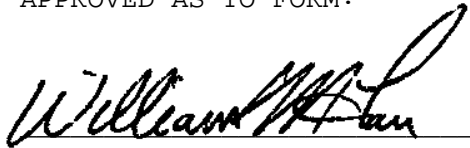
DEPARTMENT OF LAND AND NATURAL RESOURCES

Chapter 13-171, Hawaii Administrative Rules, on the Summary page dated April 20, 1988 was adopted on April 20, 1988; following public hearings held on Oahu on March 22, 1988; on Maui on March 17, 1988; on Molokai on March 21, 1988; on Kauai on March 23, 1988; and on Hawaii on March 15, 16, 1988; after public notice was given in the Honolulu Star Bulletin, Hawaii Tribune Herald, Maui News and the Garden Island on February 24, 1988 and March 8, 1988.

The adoption of chapter 13-171 shall take effect ten days after filing with the Office of the Lieutenant Governor.

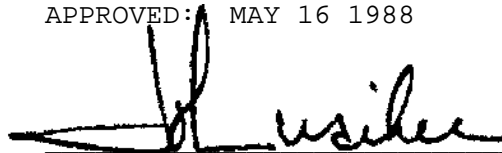

WILLIAM W. PATY, Chairperson
Commission on Water Resource
Management

APPROVED AS TO FORM:


Deputy Attorney General

Dated: 5/3/88

APPROVED: MAY 16 1988


JOHN WAIHEE, Governor
State of Hawaii

Date Filed